

[Ryan v. Niagara Mohawk Power Co.](#), 85-ERA-24 (Sec'y Jan. 25, 1990)

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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: January 25, 1990
CASE NO. 87-ERA-24

IN THE MATTER OF

JOHN E. RYAN,
COMPLAINANT,

v.

NIAGARA MOHAWK POWER CORP.,
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER APPROVING SETTLEMENT

In response to my order of August 9, 1989, counsel for complainant and Respondent each have submitted a copy of the Settlement Agreement and a General Release (Exhibit B) entered into by the parties on January 14, 1988.¹

Paragraph A4 of the Settlement Agreement and the General Release encompass matters arising under laws other than Section 210 of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1982), pursuant to which the complaint in this case was brought. My authority over this settlement agreement is

[Page 2]

limited to matters arising under the ERA. *See Egenrieder v. Metropolitan Edison Company/General Public Utilities*, Case No. 85-ERA-23, Sec. Order Approving Settlement, April 11, 1988. Accordingly, I have limited my review of the agreement and release to determining whether their terms and conditions are a fair, adequate and reasonable settlement of Complainant's allegation that Respondent violated the ERA.

In addition, paragraph A7 of the Settlement Agreement, by precluding all actions by Complainant "concerning events which occur subsequent to this Agreement," includes a waiver of Complainant's right with respect to claims which might arise in the future. I cannot approve such a waiver. *See Polizzi v. Gibbs & Hill, Inc.*, Case No. 87-ERA-38, Sec. Order, July 18, 1989, slip op. at 9. Accordingly, paragraph A7 is limited to a waiver of actions "concerning events which occurred prior to execution of this Agreement" With this limitation, the Settlement Agreement more closely conforms with the General Release whereby Complainant releases Respondent from claims arising out of his employment with Respondent or out of his resignation from such employment. Moreover, since the parties agreed, in paragraph D3, that the Settlement Agreement shall remain in full force and effect even if any part of a provision is deleted, elimination of the waiver of future claims does not affect my review of the Settlement Agreement.

Accordingly, I find the Settlement Agreement and the General Release, as limited above, to be fair, adequate and reasonable and I approve it. The complaint in this case is Dismissed With Prejudice. *See Settlement Agreement*, paragraph A2.

SO ORDERED.

ELIZABETH DOLE
Secretary of Labor

Washington, D.C.

[ENDNOTES]

¹ Complainant Ryan also has submitted an ex parte response to my order. Complainant's response, however, deals primarily with his current financial situation and with the retainer agreements between Complainant and his attorneys. Since these matters do not affect the validity of the settlement between Complainant and Respondent, I have not considered them.